

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 11, 2007

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No. 07-40018  
Conference Calendar

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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

HUGO HERRERA-SALAZAR

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 5:05-CR-2181-1

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Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:\*

Hugo Herrera-Salazar appeals his conviction and sentence for unlawful reentry in violation of 8 U.S.C. § 1326. Because his arguments are foreclosed by circuit precedent, we affirm.

Herrera-Salazar first challenges the manner in which this court reviews sentences for reasonableness in light of *United States v. Booker*, 543 U.S. 220 (2005). He does not challenge any factual or legal determinations made by the

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

district court or its application of the 18 U.S.C. § 3553(a) factors, nor does he attempt to rebut the presumption of reasonableness. As Herrera-Salazar concedes, his challenge to the presumption of reasonableness that we apply to a sentence falling within a properly calculated range under the Sentencing Guidelines is unavailing. See *Rita v. United States*, 127 S. Ct. 2456, 2463-68 (2007); *United States v. Alonzo*, 435 F.3d 551, 553-54 (5th Cir. 2006). For these reasons, we need not reach the Government's argument that Herrera-Salazar failed to preserve and properly brief the issues he raises on appeal.

Herrera-Salazar also challenges the constitutionality of § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). This court has held that this issue is "fully foreclosed from further debate." *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202).

AFFIRMED.